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HIKMA FARMACEUTICA, S.A., Plaintiff v. CURA PHARMACEUTICAL CO., INC., Defendant.	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY CIVIL NO. Civil Action **COMPLAINT**

Plaintiff, Hikma Farmaceutica, S.A., by and through its undersigned attorneys, as and for its Complaint against defendant, Cura Pharmaceutical, Co., Inc., alleges as follows:

PARTIES

1. Plaintiff, Hikma Farmaceutica, S.A. ("Hikma" or "Plaintiff") is a corporation chartered under the laws of the Republic of Portugal, with its principal place of business located at Estrada Rio Da Mo No. 8, 8a & 8b -- Fervenca, 2705- 906 Terrugem SNT, Portugal.

2. Defendant, Cura Pharmaceutical Co., Inc. ("Cura" or "Defendant") is a corporation chartered under the laws of the State of New Jersey, with its principal place of business located at 542 Industrial Way West, Eatontown, New Jersey 07724.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1), inasmuch as the amount in controversy exceeds the sum of $75,000, exclusive of interest and costs, and is between a citizen of a State and a citizen of a foreign state.

4. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) in that the defendant resides in this judicial district and a substantial part of the events or omissions giving rise to plaintiff's claims occurred in this judicial district.

SUMMARY STATEMENT OF THE CASE

5. Hikma brings this action against Cura to recover damages suffered as a result of Cura's breaches of contracts between the parties, pursuant to which Hikma agreed to sell to Cura, and Cura agreed to purchase from Hikma, certain pharmaceutical products.

FACTS COMMON TO ALL CAUSES OF ACTION

6. Hikma is and was, at all times relevant to the within Complaint, engaged in the development, manufacture and sale of pharmaceutical products.

7. Cura is and was, at all times relevant to the within Complaint, a distributor and seller of pharmaceutical products in the United States.

8. On or about January 22, 2002, Hikma and Cura entered into a certain "Distribution, Manufacture and Supply Agreement" (the "2002 Agreement"), pursuant to which Hikma agreed to sell to Cura, and Cura agreed to purchase from Hikma, the following

pharmaceutical products: Epinephrine HCL, Vitamin C, Sodium Mohruhate and Aurothioglucose.

9. A true copy of the 2002 Agreement is annexed hereto as **Exhibit "A"** and incorporated herein by reference.

10. Under the 2002 Agreement, the parties agreed that Hikma would invoice Cura for the products sold to it at "Manufacturing Cost" (as defined in the Agreement), payment to be made within thirty (30) days of invoice date, and that, in addition, the parties would share equally in the "Net Profits" (as defined in the Agreement) generated from the sale of the subject products.

11. The 2002 Agreement provided for an initial term commencing upon the date of the agreement and continuing until the fifth (5^{th}) anniversary of the date upon which approval was first received from regulatory authorities to market the products, subject to extension by Cura for two (2) additional terms of two (2) years each.

12. At all times relevant to the within Complaint, the 2002 Agreement was in effect.

13. Subsequently, on or about May 10, 2006, Hikma and Cura entered into a certain "Manufacture and Supply Agreement" (the "2006 Agreement"), pursuant to which Hikma agreed to sell to Cura, and Cura agreed to purchase from Hikma, the following pharmaceutical products: Betamesthasone Acetate; Betamesthasone Sodium Phosphate for Injection 3mg/ml; EQ 3 mg base/m; Cefotaxime Sodium Injection 500 mg/vial; Cefotaxime Sodium Injection 1 gm/vial; Cefotaxime Sodium Injection 2 gm/vial; Cefotaxime Sodium Injection 10 gm/vial; Cefazolin Injection USP 500 mg/vial; Cefazolin Injection USP 1 gm/vial;

Cefazolin Injection USP 10 gm/vial; Cefuroxime Injection USP 750 mg/vial; Cefuroxime Injection USP 1.5 gm/vial; and Cefuroxime Injection USP 7.5 gm/vial.

14. A copy of the 2006 Agreement is attached hereto as **Exhibit "B"** and incorporated herein by reference.

15. Under the 2006 Agreement, the parties agreed that Hikma would invoice Cura for products sold at the prices set forth in Schedule B to the agreement, subject to change annually upon notification to Cura.

16. Payment of invoices received by Cura was due within sixty (60) days of invoice date.

17. The initial term of the 2006 Agreement was five (5) years, with provision for extensions.

18. At all times relevant to the within Complaint, the 2006 Agreement was in effect.

19. Both the 2002 Agreement and the 2006 Agreement provided that Cura was obligated to indemnify and hold Hikma harmless from any loss, cost or expense arising from or in connection with, inter alia, any breach of the agreement by Cura.

20. Both the 2002 Agreement and the 2006 Agreement stipulated that their terms be construed in accordance with and governed by the laws of the State of New Jersey (excluding New Jersey's laws relating to conflicts of laws) and further, that the parties agreed to submit all disputes thereunder to the jurisdiction of the state or federal courts located within the State of New Jersey.

21. Pursuant to the 2002 and 2006 Agreements, Hikma proceeded to sell and deliver to Cura, and Cura proceeded to purchase and accept for delivery from Hikma, the products specified in said agreements.

22. Cura breached its obligations under the 2002 and 2006 Agreements, by failing to pay for the products that were delivered by Hikma and accepted by Cura.

23. Although under no obligation to do so, Hikma made substantial, good faith efforts to work with Cura, which included the structuring of a payment plan in January, 2008, pursuant to which Cura agreed to pay down its existing debt to Hikma, and to meet certain criteria for payment of future shipments.

24. Cura failed to comply with the aforesaid payment plan, and continued to breach its obligations under the 2002 and 2006 Agreements, such that as of April 2009, notwithstanding certain payments made on account by Cura, it owed to Hikma the sum of $3,316,659.73, being the aggregate of outstanding and overdue payments under the aforesaid agreements.

25. No payments have been received by Hikma from Cura since April 21, 2009.

FIRST COUNT

26. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 25 of this Complaint as if set forth at length herein.

27. Plaintiff and defendant entered into the 2002 Agreement, as recited above.

28. Pursuant to the 2002 Agreement, defendant was obligated to pay plaintiff for all products sold and delivered by plaintiff to defendant, per the terms of the agreement.

29. Defendant breached the 2002 Agreement by failing and refusing to pay to plaintiff the sum of $207,392.00 for goods sold and delivered to defendant thereunder, which sum remains due and owing.

WHEREFORE, plaintiff, Hikma Farmaceutica, S.A., demands judgment against defendant, Cura Pharmaceutical Co., Inc. as follows:

a) damages in the amount of $207,392.00;

b) costs of suit;

c) interest;

d) attorneys fees; and

e) such other relief as this Court shall deem just and equitable.

SECOND COUNT

30. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 29 of this Complaint as if set forth at length herein.

31. Plaintiff and defendant entered into the 2006 Agreement, as recited above.

32. Pursuant to the 2006 Agreement, defendant was obligated to pay plaintiff for all products sold and delivered by plaintiff to defendant, per the terms of the agreement.

33. Defendant breached the 2006 Agreement by failing and refusing to pay to plaintiff the sum of $3,109,267.73 for goods sold and delivered to defendant thereunder, which sum remains due and owing.

WHEREFORE, plaintiff, Hikma Farmaceutica, S.A., demands judgment against defendant, Cura Pharmaceutical Co., Inc. as follows:

a) damages in the amount of $3,109,267.73;

b) costs of suit;

c) interest;

d) attorneys fees; and

e) such other relief as this Court shall deem just and equitable.

THIRD COUNT

34. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 33 of this Complaint as if set forth at length herein.

35. There is due from the defendant the sum of $3,316,659.73 on a certain book account, a true copy of which is annexed hereto as **Exhibit "C".**

36. Payment has been demanded of defendant and has not been made.

WHEREFORE, plaintiff, Hikma Farmaceutica, S.A., demands judgment against defendant, Cura Pharmaceutical Co., Inc. as follows:

a) damages in the amount of $3,316,659.73;

b) costs of suit;

c) interest;

d) attorneys fees; and

e) such other relief as this Court shall deem just and equitable.

FOURTH COUNT

37. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 36 of this Complaint as if set forth at length herein.

38. Plaintiff sues the defendant for goods sold and delivered by the plaintiff to the defendant, upon the promise by the defendant to pay the agreed amounts therefor, as set forth in **"Exhibit D"** annexed hereto.

39. Payment has been demanded of defendant and has not been made.

WHEREFORE, plaintiff, Hikma Farmaceutica, S.A., demands judgment against defendant, Cura Pharmaceutical Co., Inc. as follows:

a) damages in the amount of $3,316,659.73;

b) costs of suit;

c) interest;

d) attorneys fees; and

e) such other relief as this Court shall deem just and equitable.

FIFTH COUNT

40. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 39 of this Complaint as if set forth at length herein.

41. Plaintiff sues the defendant for the reasonable value of the products sold and delivered by plaintiff to the defendant, upon the promise of the defendant to pay a reasonable price for same.

42. The reasonable value of the products sold and delivered to defendant is as set forth in **Exhibit "D"** annexed hereto.

43. Payment has been demanded of defendant and has not been made.

WHEREFORE, plaintiff, Hikma Farmaceutica, S.A., demands judgment against defendant, Cura Pharmaceutical Co., Inc. as follows:

a) damages in the amount of $3,316,659.73;

b) costs of suit;

c) interest;

d) attorneys fees; and

e) such other relief as this Court shall deem just and equitable.

SIXTH COUNT

44. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 43 of this Complaint as if set forth at length herein.

45. The defendant is indebted to the plaintiff in the sum of $3,316,659.73, based upon an account stated between them, as evidenced by **Exhibit "C"** annexed hereto, as well as defendant's admission and agreement that said sum is due and owing to plaintiff.

46. Payment has been demanded of defendant and has not been made.

WHEREFORE, plaintiff, Hikma Farmaceutica, S.A. demands judgment against defendant, Cura Pharmaceutical Co., Inc. as follows:

a) damages in the amount of $3,316,659.73;

b) costs of suit;

c) interest;

d) attorneys fees; and

e) such other relief as this Court shall deem just and equitable.

SEVENTH COUNT

47. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 46 of this Complaint as if set forth at length herein.

48. As recited above, Cura and Hikma agreed that Cura would indemnify and hold Hikma harmless from any loss, cost or expense arising from or in connection with any breach by Cura of the 2002 Agreement or the 2006 Agreement.

49. Cura has breached the 2002 Agreement and the 2006 Agreement.

50. The referenced breaches by Cura have caused and will continue to cause Hikma to suffer losses and expend monies in the form of attorneys fees and costs of suit.

WHEREFORE, plaintiff, Hikma Farmaceutica, S.A. demands judgment against defendant, Cura Pharmaceutical Co., Inc. as follows:

a) reasonable attorneys fees;

b) costs of suit; and

c) such other relief as this Court shall deem just and equitable.

Dated: Livingston, New Jersey
September 10, 2009

FINESTEIN & MALLOY, L.L.C.
Attorneys for plaintiff, Hikma Farmaceutica, S.A.

By: /s/ Michael D. Malloy
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CERTIFICATION

Pursuant to Local Rule 11.2, the undersigned, upon information and belief, states that the matter in controversy is not the subject of any action pending in any court or of a pending arbitration or administrative proceeding.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Michael D. Malloy
MICHAEL D. MALLOY (MM 5196)

Dated: September 10, 2009